

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Robert Lee Bailey,

Civil No. 12-1377 (DWF/LIB)

Petitioner,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Scott P. Fisher (Warden),

Respondent.

This matter is before the Court upon Petitioner Robert Lee Bailey's ("Petitioner") self-styled *pro se* objections (Doc. No. 5) to Magistrate Judge Leo I. Brisbois's June 15, 2012 Report and Recommendation (Doc. No. 4) insofar as it recommends that:

(1) Petitioner's petition for habeas corpus relief pursuant to 28 U.S.C. § 2241 be denied; and (2) this action be summarily dismissed for lack of jurisdiction. Respondent filed a response to Petitioner's objections on June 29, 2012. (Doc. No. 6.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Having carefully reviewed the record, the Court concludes that Petitioner's objections offer no basis for departure from the Report and Recommendation. Petitioner generally contends that Magistrate Judge Leo I. Brisbois improperly recommended

dismissal of his habeas petition given that he is only challenging “the execution” of his criminal sentence. (Doc. No. 5 at 3.) The Court concludes, however, as did Magistrate Judge Brisbois, that Petitioner is, in effect, asserting a constitutional challenge arising from the imposition and duration of his sentence, a challenge that is not properly before the Court. Notably, Petitioner has filed multiple appeals (as well as a § 2255 motion), and the double jeopardy argument on which he now relies has been previously considered and rejected by the Eighth Circuit. Consequently, the Court denies Petitioner’s § 2241 petition for a writ of habeas corpus.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

### **ORDER**

1. Petitioner Robert Lee Bailey’s objections (Doc. No. [5]) to Magistrate Judge Leo I. Brisbois’s June 15, 2012 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Leo I. Brisbois’s June 15, 2012 Report and Recommendation (Doc. No. [4]) is **ADOPTED**.
3. Petitioner’s Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. No. [1]) is **DENIED**.
4. Petitioner’s Motion for Recusal (Doc. No. [2]) is **DENIED AS MOOT**.
5. This action is summarily **DISMISSED** for lack of jurisdiction.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: July 6, 2012

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge